

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PA:02
PLR-127228-12

Date:
September 25, 2013

Decedent =

Date of death =

X =

Y =

Dear :

This letter responds to your authorized representative's letter dated June 21, 2012, as revised on August 30, 2012, and again on April 26, 2013, requesting a ruling whether a proposed transaction will result in the acceleration of the installment payments of the estate tax attributable to an interest in a closely held business under section 6166(g) of the Internal Revenue Code.

Facts

The facts submitted and the representations made are as follows: Decedent died testate on Date. Decedent died owning a greater than 20-percent interest in each of several closely held general partnerships, limited liability companies (LLC), and corporations. Decedent's estate represents that, at the time of Decedent's death, Decedent and his held X commercial real estate real property interests as tenants-in-common as nominees for one of the general partnerships, Business.

Decedent's executors timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and made a section 6166 election to defer the payment of estate tax attributable to Decedent's interests in the general partnerships, LLCs, and corporations, including Business. Business represents more

than 50 percent of the total value of the business interests the estate aggregated under section 6166(c) and for which it made the section 6166 election.

For business purposes, the partners of Business, Decedent's estate and Decedent's _____, intend to restructure the business as follows. Business will distribute each of the properties owned by it pro rata to its partners, namely Y percent to Decedent's estate and the remainder to Decedent's _____. Thereafter, Decedent's estate and Decedent's _____ will contribute its or his respective interest in one or more of the properties to separate LLCs in return for an interest in the LLC equal in value to the property contributed. Each LLC will be owned pro rata by Decedent's estate and Decedent's _____, namely Y percent by Decedent's estate and the remainder by Decedent's _____. Each LLC will continue the active business previously conducted by Business with respect to that particular property. Decedent's estate represents that there will be no withdrawal of money or other property from the closely held business as a result of the proposed transaction.

Rulings Requested

Decedent's estate requests rulings that neither (a) the distribution pro rata of one or more properties from Business to Decedent's estate and Decedent's _____, nor (b) the subsequent contribution of each property by Decedent's estate and Decedent's _____ to the LLCs will constitute a distribution, sale, exchange or other disposition of an interest in a closely held business within the meaning of section 6166(g)(1). In addition, (a) the distribution pro rata of one or more properties from Business to Decedent's estate and Decedent's _____, and (b) the subsequent contribution of such properties by Decedent's estate and Decedent's _____ to the LLCs, taken in the aggregate, will not result in the acceleration of the installment payments of Federal estate tax provided in section 6166(a).

Relevant Authorities

Section 6166(a)(1) provides, in part, that if the value of an interest in a closely held business that is included in determining the gross estate of a decedent exceeds 35 percent of the adjusted gross estate and the decedent was a citizen or resident of the United States, the executor may elect to pay part or all of the tax imposed under section 2001 in 2 or more (but not exceeding 10) equal installments. Under section 6166(a)(2), only the amount of estate tax attributable to the closely held business may be paid in installments.

Section 6166(b)(2)(A) provides that the determination of whether an interest qualifies as an interest in a closely held business under section 6166(b)(1) is made as of the time immediately before the decedent's death. A decedent must conduct an active trade or business, or must hold an interest in a corporation, LLC, or partnership that carries on an active trade or business, in order for the decedent's interest to qualify

as an interest in a closely held business under section 6166. Rev. Rul. 2006-34, 2006-1 C.B. 1172, illustrates the types of activities that constitute an active trade or business.

Section 6166(c) provides that where 20 percent or more of the total value of each of two or more businesses is included in determining the value of a decedent's estate, the decedent's interests in those closely held businesses shall be treated as an interest in a single closely held business.

The Tax Reform Act of 1976 created a new section 6166 and redesignated the former section as section 6166A. Pub. L. No. 94-455, section 2004(a). The Economic Recovery Tax Act of 1981 repealed section 6166A and amended section 6166 so that it would apply in most cases that were previously governed by section 6166A. Pub. L. No. 97-34, section 422(d). Neither the Economic Recovery Tax Act of 1981 nor its legislative history indicates any Congressional intent that a disposition of an interest under section 6166A would not be a disposition under section 6166. As a result, the regulations under section 6166A are considered applicable to this ruling request to the extent those regulations are not inconsistent with the language of section 6166.

Section 6166(g)(1)(A) provides that if (i) any portion of an interest in a qualified closely held business that qualifies for the section 6166(a)(1) election is distributed, sold, or otherwise disposed of, or money or other property attributable to such an interest is withdrawn from such trade or business, and (ii) the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of such trade or business, then the extension of time for payment of the tax provided in section 6166(a) shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

Treasury Regulation section 20.6166A-3(e)(1) provides that in any case where in the aggregate 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of, the privilege of paying tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the District Director. When determining whether the 50-percent threshold is met, dispositions and withdrawals are aggregated.

Section 20.6166A-3(e)(2) provides that the phrase "distributed, sold, exchanged, or otherwise disposed of" is broad in scope and "comprehends all possible ways by which an interest in a closely held business ceases to form a part of the gross estate."

Rev. Rul. 66-62, 1966-1 C.B. 272, holds that where the change in the operation of a business from an incorporated form to an unincorporated form does not materially alter the business or the interest of the estate in the business, such a change will not

result in the termination of the installment privilege under section 6166 that is otherwise available to the estate.

Analysis

Because Business represents more than 50 percent of the total value of the closely held businesses reported on decedent's estate tax return and aggregated under section 6166(c), if the proposed transaction is a distribution, sale, exchange, or other disposition under section 6166(g)(1), it will exceed the 50 percent threshold of section 6166(g)(1)(A)(ii), with the result that the section 6166 extension would terminate, and the unpaid portion of the estate tax payable in installments would have to be paid on notice and demand.

The transaction in this case, Business' distribution of the properties from Business to Decedent's estate and Decedent's _____, their subsequent contribution of the properties to individual LLCs in exchange for all of the membership interests in the LLCs, and their continued operation of the trade or business in substantially the same manner as before, does not materially alter the business. Furthermore, there will be no withdrawal of money or other property from the business formerly conducted by Business. Decedent's estate will hold the same proportionate ownership interest in each LLC as Decedent held in Business when he died.

Based solely on the facts and information submitted and the representations made, neither (a) the distribution pro rata of one or more properties from Business to Decedent's estate and Decedent's _____, nor (b) the subsequent contribution of each property by Decedent's estate and Decedent's _____ to the LLCs will constitute a distribution, sale, exchange or other disposition of an interest in a closely held business within the meaning of section 6166(g)(1). Furthermore, (a) the distribution pro rata of one or more properties from Business to Decedent's estate and Decedent's _____, and (b) the subsequent contribution of such properties by Decedent's estate and Decedent's _____ to the LLCs, taken in the aggregate, will not result in the acceleration of the installment payments of Federal estate tax provided in section 6166(a).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Moreover, this ruling expresses or implies no opinion as to the form of ownership of the properties as of Decedent's date of death, or whether the proposed transactions result in any other tax consequences other than transfer taxes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of it to the Chief, Estate and Gift Tax Operations.

The rulings contained in this letter are based upon information submitted and representations made by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified the facts alleged or the material submitted in support of the request for rulings, the facts are subject to verification on examination.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the ruling. See section 11.04 of Rev. Proc. 2013-01. However, when the criteria in section 11.05 of Rev. Proc. 2013-01 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely,

Lawrence Mack
Branch Chief
(Procedure & Administration)

Enclosures (2): One copy of this letter
 Copy for § 6110 purposes